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FILED
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JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term
1968

- - - - - - - - - - - - - - - -

No. 660

- - - - - - - - - - - - - - - -

In the Matter of
JOHN ELWOOD DENNETT
Petitioner

- - - - - - - - - - - - - - - -

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on the 15th Day of July 1968. (No. 9882)

OPINIONS BELOW

There was no opinion in the United States District Court for the District of Utah, where this matter originated. The Tenth Circuit Court of Appeals also published no opinion in this matter, unless one can consider the action of the Tenth Circuit Court's action on July 15, 1968 as being an opinion. The action on that date affirmed the District Court's judgment, but gave no reasons whatsoever for the action taken. It bears on its face the legend: "DO NOT PUBLISH." It therefore has not been and will not be reported, but it is set forth verbatim in the appendix herein.

JURISDICTION

The Jurisdiction of the court is invoked under 28 USC 1254 (1). The judgment of the Circuit Court of appeals was entered on July 15, 1968.

QUESTIONS PRESENTED

1. Whether a court of appeals has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the Supreme Court's power of supervision.

2. Whether a court of appeals has so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.

3. Whether or not the petitioner has been deprived of his property without due process of law in utter derogation of the Constitutional Guarantees set forth in the Fifth amendment.

4. Whether a person can be, against his will, adjudged a bankrupt and his estate ravaged, dissipated, wasted, and liquidated when he has not been accused of any act of bankruptcy, and no act of bankruptcy has been proven, or any evidence been taken which would tend to prove an act of bankrupcty.

5. Whether a person can be forced through bankruptcy when neither he, nor any of his creditors have in any manner requested a bankruptcy proceeding, petitioned for bankruptcy, alleged an act of bankruptcy, or offered any evidence which would tend to prove an act of bankruptcy.

6. Whether there is such a thing as a bankruptcy which is neither a voluntary bankruptcy, nor is it an involuntary

bankruptcy.

7. Whether a court can without petition of any kind, or evidence of any kind, adjudge a person a bankrupt, and subject him to the humiliation, embarassment, degradation, and harassment of an ordinary bankruptcy without violating the very foundations of jurisprudence and justice upon which the American System is founded.

8. Whether this, The Supreme Court, will sanction and condone the actions of the lower courts which flagrantly violate Canon 19 of the Judicial Ethics, and which infringe upon Canons 21 and 36 of the Judicial Ethics.

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment V.

. . . . . nor shall any person. . . . . .
be deprived of . . . property without due process of law.

STATUTES INVOLVED

11 USC 1

The words and phrases used in this action and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:
(1) "A person against whom a petition has been filed whall include a person who has filed a voluntary petition."

(2)"Adjudication shall be a determination. whether by decree or operation of law, that

a person is a bankrupt."

(4) "Bankrupt shall include a person against whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt."

(11) "Creditor" shall include anyone who owns a debt, demands, or claims provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy.

(19)A person shall be deemed insolvent within the provisions of this act whenever the aggreate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts.

11 USC 21:

A. Acts of bankruptcy by a person shall consist of his having (1) concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 67 or 70 of this act, or (2) made or suffered a preferential transfer as defined in subdivision a of section 60 of this Act, or (3) suffered or permitted, while insolvent, any creditor to ob-

tain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such a lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his ability to pay his debts and his willingness to be adjudged a bankrupt.

B. A petition may be filed against a person within four months after the commission of an act of bankruptcy. . . . .

C. It shall be a complete defense to any proceeding under the first act of bankruptcy to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing of the petition against him. If solvency at such date is proved by the alleged bankrupt, the proceedings shall be dismissed. In such proceedings the burden of proving solvency shall be on the alleged bankrupt.

D. Whenever a person against whom a petition has been filed alleging the commission of the second, third, or fifth act of bankruptcy takes issue with and denies the allegations of his insolvency or his inability to pay his debts as they mature, he shall appear in court on the hearing, and prior thereto if ordered by the court, with his books, papers, accounts, and submit to an examination and give testimony as to all matters tending to establish solvency or insolvency or ability or inability to pay his debts as they mature and, in case of

his failure to do, the burden of proving solvency or ability to pay his debts as they mature rests upon him.

11 USC 41. . . .

A. Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena shall be made upon the person therein named. . . . .

B. The (alleged) bankrupt. . . may appear and plead to the petition within five days after the return day or such further time as the court may allow.

C. Petitions for both voluntary and involuntary bankruptcy shall be verified under oath.

D. If a party entitled to appear and plead shall appear, within the time limited, and controvert the facts alleged in the petition, the court shall determine, as soon as may be, the issues presented by the pleadings, . . . and make the adjudication or dismiss the petition..

11 USC 42:

A. A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury in respect to the question of his insolvency, except as otherwise herein provided, and of any act of bankrupcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed.

C. The right to submit to a jury, matters in controversy or an alleged offense under this Act shall be determined and enjoyed, except as provided by this act, according to the laws of the United States now in force or such as may be hereafter enacted in relation to trials by jury.

11 USC 92:. . .

(A) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present, except as otherwise provided.

(B) Except as otherwise provided in this Act, creditors holding claims which are secured or have priority shall not in respect to such claims be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities and then only for such excess.

11 USC 95. . . Who may file and dismiss petitions.

A. Any qualified person may file a petition to be adjudged a voluntary bankrupt.

B. Three or more creditors who have provable claims not contingent as to liability against a person, amounting in the aggregate to $500. 00 in excess of the value of any securities held by them, or, if all of the creditors of the person are less than twelve in number, then one or more of the creditors whose claim or claims equal that amount may file a petition to have him adjudged a bankrupt; but the claim or claims, if unliquidated, shall not be counted in computing the number and the aggregate amount of the claims of the creditors joining in the petition, if the court determines that the claim or claims can

not be readily determined or estimated to be sufficient, together with the claims of other creditors, to aggregate $500, without unduly delaying the decision upon the adjudication.

11 USC 823. . Petition and Stay . . . . . .
A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature and shall set forth the terms of the arrangement proposed by him.

11 USC 824. . .
The petition shall be accompanied by--
(a) a statement of the executory contracts of the debtor and the schedules and statement of affairs, if not previously filed, provided however, that if the debtor filed with the petitiona list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application of the debtor, grant for cause shown, further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct.

11 USC 828. . .
Unless and until otherwise ordered by the court, . . . the filing of a petition under this chapter shall operate as a stay of any act or proceeding to enforce any lien upon the real property or chattel real of a debtor.

11 USC 881. . . .

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 424 of this Act, are not duly filed, or if an arrangement is withdrawn or abandoned prior to its acceptance and no other arrangement is pending, or if no arrangement is accept- at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall--

(2) where the petition was filed under section 422 of this Act, enter an order upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

JUDICIAL CANONS OF ETHICS INVOLVED

Canon 19 of the American Bar Association. . . .

In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is de sirable that Courts of appeals. . should indicate their views on questions of law argued before them and necessarily arising in the controversy.

STATEMENT OF THE CASE

This case was begun as a proceeding under Chapter XII of Title 11, USC, commonly known as a "Real Estate Arrangement." It has ended up as a regular bankruptcy which neither the petitioner, nor any of his creditors, as defined by the act, wanted. It is a proceeding from which no-one, petitioner his creditors, or anyone else can possible derive any benefit or good. It is a proceeding neither the petitioner nor any of his creditors, as defined by the act, wishes to continue with, either in its original form, or as a regular bankruptcy.

At the time it was instituted, the petitioner was not insolvent, and had committed no act of bankruptcy. While some temporary difficulty was being experienced in terms of a liquid cash position, there was no default in the payment of debts which could not be dealt with normally. True, there was some litigation in progress, and some slowness in payment of installments, but no-one was unduly alarmed.

The original petition for a real estate arrangement was not prompted by any of this. It was prompted by the illegal appointment of a "receiver" of property the "receiver" claimed belonged to petitioner's wife. The history behind this appointment is so depraved and bizarre and it does not lend itself to dignified narrative. Suffice it to say that one formerly prominent building contractor, having volunteered to act as a trustee in order to take out a loan during the "tight money period" of 1966 for petitioner and his wife on an office building, some months after taking out the loan, volunteered his services and assistance in installing hard surfacing on

a parking lot attendant to said building. He later undertook some roof repairs, but became so intolerable due to his lack of attention to business, his uninterrupted insobriety, violent temper, and unpredictability, that petitioner and his wife ordered him from the premises. His personal traits were aggravated by the fact that his inability to complete a few weeks' work in more than 10 months had caused a cessation of rental income and placed the building in jeapordy of foreclosure by the holder of the first mortgage.

Upon being summarily dismissed from any further duties on the building, and forbidden to enter, this building contractor left cursing, vowing to avenge his injured pride by threatening to transform his trustee's title into one of absolute ownership, a threat so ridiculous on its face that it could not be dignified with an intelligent answer.

He found an attorney who upon a complaint which states no cause of action or claim for relief at all, persuaded a State Judge, whom he met at a hall drinking fountain in the courthouse, to sign a paper, which the judge freely confessed to petitioner afterwards, he never read before signing, and which he believed to be an order shortening a time for hearing.

After trying continuously from April of 1967 until September 1967 to dislodge the illegal appointment of the receiver (appointed by order of the judge at the drinking fountain) without any evidence of any kind to support such a receiver, relief was sought under Chapter XII of the Act, which offered some respite by its provisions which provided that any State-court appointed receiver would have no duties upon

the successful filing of a Chapter XII proceeding, and that all proceedings the debtor or his property were stayed by the proceeding.

Pressures of the litigation instituted by the building contractor and his "receiver" prevented the preparation of adequate schedules, statements, and plans, either at the time of filing, or afterwards, within the time allowed by the court. While the inadequacy of the presentation cannot be defended, it can certainly be explained.

Although the Honorable Judge Christensen, at hearings held, intoned with unmistakable clarity the dire consequences which would be visited upon anyone who defied his injunction against proceeding against the petitioner or his property, the attorneys who secured the illegal appointment of the "receiver", the "receiver", and the State judge blandly and flippantly ignored the order with the excuse that the only named defendant in the "receivership" action was petitioner's wife, and although petitioner's wife was scarcely aware of the action and the entire thrust of the vendetta was directed against petitioner, they felt perfectly justified, by working in relays, to bring petitioner to near collapse, occupying him day and night with hearings and appeals to the State court, in many instances in order to retain physical freedom, so that they were ultimately successful in their efforts to prevent the filing of schedules in the time allowed by the court.

Now although neither the attorneys who secured the appointment of the "receiver",

or the receiver himself, nor any of the clients which they represented, have ever qualified as "creditors" under any definition of the word as used in the Act, and have therefore never had any standing in any of these proceedings, they moved the court for an order either dismissing the proceeding, or converting it into a regular bankruptcy.

The court ordered notices sent out to the creditors and other parties in interest. There was a large turnout. There was considerable argument between the "receiver" and petitioner and the attorney who secured the appointment of the "receiver". The accusations and arguments were bitter, undignified and demeaning. The creditors, who sat by quietly as spectators, probably enjoyed the side-show, but really weren't too concerned. They did not participate at in the proceedings. Not one word of evidence, at any time or place in the proceedings, was received.

During a short recess the "receiver" held a "caucus" with some of his friends who were present. The petitioner was denied the right to listen. The creditors were denied the right to say anything. The creditors were, without exception, friendly to the petitioner and willing to support him in any arrangement he might propose.

Although what was said upon reconvening has no basis in fact at all, and certainly did not represent either a consensus of the creditors or anyone else who was entitled to have an opinion about it, the receiver announced to the court that the "creditors" preferred a regular bankruptcy. The creditors, who had taken no part in the "caucus" flatly deny that this was their preference, opinion,

or wish. Moreover they flatly deny that they authorized the "receiver" to be their spokesman, or to make any representations to the court in their behalf whatsoever.

Judge Christensen, being obviously annoyed by the late filing of the schedules, and very distraught over the insults and indignities which had passed between counsel before him on that particular morning, dispensed with the requirement imposed by law that if the petitioner resisted the adjudication as a regular bankrupt, the number of creditors, as defined by the act, possession qualifications as defined by the act, would have to present a petition in the form required by the act, alleging the commission of one or more acts of bankruptcy as defined by the act, to which (petition) the debtor would have an opportunity to plead, as insured by the act, and to offer evidence to the effect that he had committed no act of bankruptcy and was not a bankrupt as defined by the act.

Judge Christensen simply cut across all of the requirements of the law, and upon an unverified "motion", which (motion) alleged not one single, solitary act of bankruptcy, and which was not subscribed to by one single solitary person who could qualify as a creditor under the definition of the act, and without hearing even argument from one single solitary creditor, summarily, and without one word of evidence of any kind, either from the petitioner or his creditors, without cause, justification, or reason, summarily adjudged petitioner a bankrupt and ordered regular bankruptcy proceedings against pet-

itioner. The creditors were dumbfounded and offered their help to petitioner.

Before a first meeting of creditors could be held, petitioner appealed the adjudication to the Tenth Circuit Court of Appeals.

Within 30 days from the date of appeal, the "receiver", who is a practicing attorney, filed in his own behalf a motion to affirm the judgment of Judge Christensen in accordance with Rule 42 of the Tenth Circuit Court of Appeals Rules of Civil Procedure. (This is approximately the same rule as Rule 16 of the United States Supreme Court). Although the benefits of Rule 42 are reserved for "appellees" (who are the creditors in a bankruptcy proceeding), Mr. Smith, the "receiver" arrogated to himself some sort of status, and persuaded the attorney for Prudential Federal Savings & Loan, which is not a creditor, the attorney for Strevell Patterson Finance, which had been previously paid in full and was not a creditor, the attorney for A. P. Neilson who denied in open court that he was either a debtor or creditor of petitioner, the attorney for IBM which is not a creditor under the definitions of the act, the attorney for Beehive State Bank, which is a debtor of petitioner, and the attorneys for Beneficial Life Insurance Company, which is not a creditor under the definition of the act, to affix their signatures to his motion.

The motion is so totally lacking in sophistication, that it evoked laughter and merriment when petitioner called upon his creditors and their attorneys to discuss their attitudes

towards it. The attorneys for the creditors were not even prone to dignify it with a response, assuring petitioner that the Tenth Circuit court would probably deny the motion summarily even if no-one made a response to it.

The decision was delayed by the fact that between Salt Lake City and Denver, one of the clerks of the court caused the record to be lost. It took some motions, time, and effort to reconstruct the record.

No argument was held on the motion. Shortly after the reconstructed record was sent to Denver, Mr. Smith, the "receiver" made a business trip to Denver. Shortly after his return, the Tenth Circuit Court, (with only two judges acting) (and three judges not participating) rendered a "per curiam" affirmance of Judge Christensen's order of adjudication.

The affirmance is not captioned either as an order, the granting of a motion, an opinion, or anything else an appellate court usually renders. It appropriately bears the very significant legend: DO NOT PUBLISH. After a recitation of the parties filing the motion under Rule 42, the Circuit states, without giving any reason at all, that "It is manifest from a review of the record that there was a substantial basis for the district court's action and we decline to set it aside. The motions to affirm are granted and the judgment is affirmed."

The affirmance is completely devoid of any reasons for the action taken. There is no discussion of the principles of law involved. There is no mention of the fact that there was not involuntary petition filed by anyone, afortiori by "creditors"; that no-where in the file is there a single allegation

that the petitioner had committed even a single act of bankruptcy. The Tenth Circuit made no mention of the fact that Ronald F. Hubbard, Court Reporter to Judge Christensen, and Lucille Hallam, Court Reporter to Judge Ritter each certified to the Circuit Court that after searching their respective transcripts, they could not find one single word of sworn testimony or any other kind of evidence. (Their respective certificates are reproduced verbatim in the appendix.)

No mention of any kind is made of the fact that not one single creditor (appellees in the Circuit Court) took any action whatsoever to oppose the appeal, or took any action to support Judge Christensen's adjudication. No mention is made by the Circuit Court as to why it could, under any interpretation of the law and the record, could give to those who filed the motion to affirm, any recognition or standing.

While admitting that law is an inexact science, and admittedly a matter of view and opinion, it is impossible to see how, under any theory, or interpretation, the result of Judge Christensen or the Tenth Circuit could be reached.

REASONS FOR GRANTING THE WRIT

This petition for writ should be granted in order to prevent a most singularly unique and bizarre miscarriage of justice and a singularly unique and bizarre departure from the most fundamental principle underlying Anglo-Saxon and American jurisprudence, namely that a person and his property should be dealt with in accordance with the law and the evidence and not by the arbitrary exercise of unrestrained judicial power.

More particularly, the United States Supreme Court should act to prevent the iniustice which arises when law and evidence are disregarded. This is evidenced in this case in part by the following observations:

1. This is no voluntary bankruptcy. While the Chapter XII Real Estate arrangement was voluntarily commenced, their is hardly any relationship between the relief sought therein and the ignominy of a senseless, unnecessary bankruptcy which no-one wants.

2. This is no involuntary bankruptcy. Petitioner states flatly, unequivocally, and unapologetically that there is not one allegation, anywhere in the file, which states or implies that petitioner has committed one single act of bankruptcy.

3. Ergo, there is no evidence or proof on the question of whether there has been an act of bankruptcy committed. Since it is not alleged, it need not be either proven or disproven. It is not even an issue until someone places it in issue.

4. The law clearly defines who shall have something to say about a bankruptcy situation. So that strangers do not come in off the street to offer their advice and comments on the matter, the law clearly limits the contest to the debtor and his creditors and then proceeds to tell how to distinguish between the creditors and the Quoxitic sensation seekers, the sadists, the busybodies, the orators and the noisemakers. Courts should pay some attention to the guidelines. Petitioner states flatly and unequivocally that not one creditor can be produced from anywhere, who has a provable standing in light of the definitions offered by the act, who will speak for or favor the bankruptcy. Mr. Smith, who has led the vanguard in the past, has now had his support

withdrawn. Mr. Neilson, his sponsor, has sold him out and assigned his rights in the litigation to a third party.

5. Not only have the wishes of the petitioner been totally ignored. The wishes of the petitioner's creditors have been likewise rudely dealt with. They have yet to be heard on the question of whether an involuntary petition should be pressed and they flatly repudiate the statements made by Mr. Smith, purportedly in their behalf.

6. The original petition for an arrangement does not use the mandatory language of 11 USC 823. The petitioner could not go beyond his statement in paragraph 4 of the original petition and be truthful. It states: "That your petitioner has been unable to pay some of his debts as they mature." This failure might render the plan fatally defective and subject to summary dismissal, but it is certainly not grounds to adjudge an unsuccessful petitioner an ordinary bankrupt.

7. 11 USC 881 allows for two results in disposing of an unsuccesful petition. This brief seeks not so much a continuation of the Chapter XII arrangement. The need therefor is past. When relief was needed, the courts turned their backs on the debtor's plea. That is now history. A dismissal would be more agreeable to the petitioner than a continuation of the Chapter XII. It is the ordinary bankruptcy that is unbearable.

8. No decision should be allowed to stand when there is a total lack of evidence. This is not a case of examining the sufficiency of the evidence, or the proper interpretation that should be given it. This is a case where there is no evidence at all.

This court has held in Thompson vs. City of Louisville, 362 U. S. 199 (1960): (Examining whether the evidentiary support was so totally devoid and lacking as to constitute a violation of the Due Process Clause of the Fourteenth Amendment):

> Decision of this question turns not on the suffiency of the evidence, but whether this (case) rests on any evidence at all.

9. No Circuit Court should be allowed to brush aside serious legal considerations and arguments, and render "DO NOT PUBLISH" decisions which are not substantiated by even a scintilla of law or evidence. They should be required to act in accordance with Canon 19 of the Judicial Ethics and show, through its opinion, that it understands the issues presented by the case and has not overlooked serious arguments of counsel, thereby promoting confidence in its intellectual integrity of the case. If the Circuit Court had looked seriously at any one of the arguments presented in response to Mr. Smith's motion, it would have had to deny a motion to affirm. There was such an overwhelming plethora of reasons and arguments to reverse Judge Christensen, that restraint had to be exercised not to overdo by overarguing a most obvious case for reversal.

10. To put a "trustee" in ordinary bankruptcy in possession of a petitioner's estate, when there has been no voluntary or involuntary petition in bankruptcy which compel such an appointment, and no evidence which would support an involuntary petition, is a flagrant, impious, insulting, ignominous, humiliating denial of

due process of law, guaranteed under the federal judicial system, by the Fifth Amendment, in that he is involuntarily deprived of his property without due process of law.

11. Absolutely no benefits will insure to anyone. Petitioner specifically stated that he sought no relief at all from any debts, neither did he claim or assert any exemptions avaible to him under the law. This is an attitude will will continue regardless of the outcome. Petitioner flatly refuses the benefits of a discharge and stubbornly refuses to claim any exemptions. The creditors are now happy and satisfied. They always were. The only person clamoring for a discontinuance of the Chapter XII proceeding was Mr. Smith. It was impeding and obstructing the administration of his illegal and ruinous receivership. That is now a moot question.

12. There is now no vestige of purpose in continuing with any type of proceeding, except to correct a most damaging, humiliating, and insulting record. Resistance of petitioner's efforts to reverse the travesty in the District Court and the Circuit Court would be tantamount to sadism.

13. At some levels at least, an unnecessary bankruptcy is ruinous. Petitioner has been variously employed as an attorney, teacher of law, university instructor in various subjects, consul of a European Nation of major stature, and has been active in various civic, cultural, academic, and religious affairs. The endless confrontations with business associates, the ceaseless explanations, the total resulting loss of business credit, the loss of being able to be bonded, the loss of interest by prospective employers, the withdrawl of bank credit, the near-collapse of a considerable real-estate empire, the whispered conversations by petitioner's students at school, the humiliation

in meeting those in diplomatic service with whom petitioner had a social acquaintanceship, the utter inability to explain to attorneys, friends and associates as to how this result could have possibly happened, and multitudinous other things too numerous to mention, are ordeals and trauma one should not be forced to endure unnecessarily and for no purpose.

14. This petition will probably be completely unopposed, as it would have also been unopposed in the Tenth Circuit if the creditors could have been heard in the matter.

CONCLUSION

If the result were not so tragic, this whole proceeding could be characterized as a comedy of erors. It has arrived at this sorry state because a few people, who had no say-so in this matter one way or the other were improvidently listened to in a setting of near hysteria.

What happened in the Circuit Court is impossible to explain. There is usually a great deal of circumspection there. Perhaps they concluded that the failure to file schedules on time was an undisputed fact (which it is), making the invocation of 11 USC 881 mandatory. Up to this point the logic appears to be sound. The error seems to be in the assumption that 11 USC 881 allows for only one result. Perhaps if the petition contained the required language of 11 USC 823, the trial court would have had some discretion, without the taking of evidence. It seems that the language of 11 USC 823, if used, is ipso facto, nearly an act of bankruptcy in itself, if followed up by a written statement of willingness on the part of the petitioner

to be adjudged a bankrupt. Not only is the language of 11 USC 823 missing, the written declaration of willingness to be adjudged a bankrupt is most certainly and glaringly lacking.

For the reasons advanced above, this petition should be granted and the petitioner's adjudication as a bankrupt should be vacated and reversed in order to correct a plainly erroneous decision and to avert a grave miscarriage of justice.

Respectfully submitted,

John E. Dennett, appearing
pro se, petitioner
1243 East 2100 South
Salt Lake City, Utah 84106

UNITED STATES COURT OF
APPEALS--TENTH CIRCUIT

(DO NOT PUBLISH)

JULY TERM 1968

FILED
JUL 15, 1968

In the Matter of:

JOHN ELWOOD DENNETT,

Bankrupt

No. 9882

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

(D. C. B-1153-67)

John Marhall, Fred Finlinson, William G. Fowler, Robert M. Anderson, Alvin I. Smith, Thomas Green Conway A. Ashton, and Milan B. Robbins filed motions to affirm.

John E. Dennett filed a pro se response to the motion.

Before MURRAH, Chief Judge, and BREITENSTEIN, Circuit Judge

PER CURIAM

Dennett filed a petition for a real property arrangement in reliance upon Chapter 12 of the Bankruptcy Act, 11 USC 822. After giving notice to Dennett and all other interested parties, the district court conducted a hearing and adjudged the petition

a bankrupt under the provisions of 11 USC 881. The bankrupt appealed from this order.

It is manifest from a review of the record that there was a substantial basis for the district court's action and we decline to set it aside. The motions to affirm are granted and the judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIV.

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In the Matter of : REPORTER'S CERTIFICATE
JOHN ELWOOD DENNETT : B-1153-67
Petitioner

- -

Ronald F. Hubbard, court reporter for the Honorable Judge A. Sherman Christensen, certifies:

1. That he attended and reported all of the hearings in the above captioned matter which were held before the Honorable A. Sherman Christensen.

2. That at none of the hearings were any witnesses called or sworn, nor was any oral testimony adduced.

3. That aside from two exhibits offered in the proceedings, there was no evidence of any kind offered, admitted, or refused.

4. That the proceedings consisted principally if not exclusively of argument of counsel.

Dated this 6th Day of March 1968.

/s/ Ronald F. Hubbard
Ronald F. Hubbard
Reporter of the U. S. District
Court for the District of Utah

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

- - - - - - - - - - -

In the Matter of :

REPORTER'S CERTIF

JOHN ELWOOD DENNETT : ICATE.

Petitioner B-1153-67

- -

I, Lucille Hallam, Official Reporter, United States District Court, District of Utah, Central Division, certify:

1. That I attended and reported all of the hearings in the above captioned matter which were held before the Honorable Willis W. Ritter, Chief Judge.

2. That at none of the hearings were any witnesses called or sworn, nor was any oral testimony adduced. There was no evidence of any kind offered, admitted, or refused.

3. That the proceedings consisted of an explanation of the matter and a withdrawl from the matter by Judge Ritter.

Dated this 21st Day of February 1968.

/s/ Lucille Hallam

Lucille Hallam
Official Reporter